

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15094 of the Rhema Christian Center, pursuant to 11 DCMR 3108.1, for a special exception under Section 207 to establish a private school as a Christian Day School for 80 students from kindergarten through 12th grade and a staff of six on the first and second floors in an R-2 District at premises 4915 Sargent Road, N.E., (Square S-3982, Lot 31).

HEARING DATE: July 19, 1989
DECISION DATE: July 28 and September 6, 1989

ORDER

The Board granted the application by its Order dated September 21, 1989. Donald Towles, et al., parties in opposition to the application, appealed the Board's decision to the D.C. Court of Appeals in Case No. 89-1243.

By judgment dated July 24, 1990, The D.C. Court of Appeals **REVERSED** the Board's decision in the case. A copy of that judgment was forwarded to the Office of the Zoning Secretariat by the Clerk of the D.C. Court of Appeals on February 27, 1991.

Accordingly, it is hereby **ORDERED** that BZA Order No. 15094, dated September 21, 1989, is hereby **VACATED**, the Board's decision is **REVERSED**, and the application is **DENIED** consistent with the judgment of the D.C. Court of Appeals. The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs is hereby requested to insure that the property is brought into compliance with the applicable provisions of the Zoning Regulations.

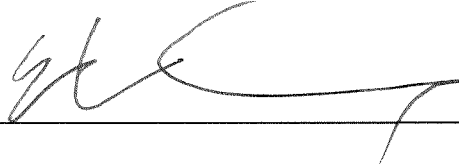
DECISION DATE: April 3, 1991

VOTE: 3-0 (Charles R. Norris, Paula L. Jewell, and Carrie L. Thornhill to reverse and deny; Sheri M. Pruitt not voting, not having heard the case).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


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FINAL DATE OF ORDER:

APR 19 1991

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15094Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15094

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 19 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Clarence C. Givens
Rhema Christian Center
4915 Sargent Road, N.E.
Washington, D.C. 20017

Robert McCurdy
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Washington, D.C. 20017

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Gwendolyn A. Davis
1279 Delafield Place, N.E.
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Harridell Jones
4952 Sargent Road, N.E.
Washington, D.C. 20017

BZA ATTESTATION SHEET 15094
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Donald & Patricia J. Towles
1227 Delafield Place, N.E.
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Edward D. Lewis
4925 Sargent Road, N.E.
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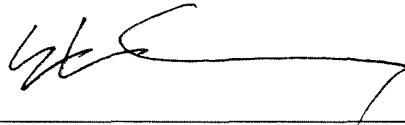
Virginia Moore
1249 Delafield Place, N.E.
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James L. Jones
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Mary Baird Currie, Chairperson
Advisory Neighborhood Commission 5-A
Slowe School Demountable
14th & Irving Streets, N.E.
Washington, D.C. 20017



EDWARD L. CURRY
Executive Director

DATE: _____

APR 19 1991

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15094 of the Rhema Christian Center, pursuant to 11 DCMR 3108.1, for a special exception under Section 207 to establish a private school as a Christian Day School for 80 students from kindergarten through 12th grade and a staff of six on the first and second floors in an R-2 District at premises 4915 Sargent Road, N.E. (Square S-3982, Lot 31).

HEARING DATE: July 19, 1989

DECISION DATES: July 28 and September 6, 1989

FINDINGS OF FACT:

1. The subject site is located on the southwest corner of the intersection of Sargent Road and Delafield Place and is known as premises 4915 Sargent Road, N.E. It is in the R-2 District.
2. The subject site contains approximately 24,000 square feet of lot area and is irregularly shaped.
3. The site is developed with a large church structure. The largest portion of the existing structure, which contains the main church sanctuary, is located at the rear of the site and was constructed in approximately 1984 as an addition to the two story portion of the structure located at the corner of Sargent Road and Delafield Place. The church has been located at the subject site since approximately 1977.
4. The area in the immediate vicinity of the subject site is predominantly developed with single-family semi-detached and row dwellings located on rather narrow lots. Saint Gertrudes School is situated directly south of the subject site on a large tract of open land accessed by a private drive off of Sargent Road. North Michigan Park and Recreation Center is located to the west of the site at 13th Street and Delafield Place.
5. The site abuts Sargent Road, which is a four-lane right of way ranging in width from seventy-five to ninety feet and having two lanes for curb parking, to the west. The site abuts Delafield Place, which is sixty-five feet in width, to the north. Sargent Road intersects with South Dakota Avenue one block south of the site and with Eastern Avenue six blocks to the north.

6. The church property abuts the rear yards of several semi-detached dwellings fronting on Delafield Place. The church property is at a higher grade level than these properties which have rear retaining walls. There is a six foot high wooden stockade fence along the church's property line adjacent to these residences. The site abuts a sixteen foot wide public alley to the east.

7. The applicant proposes to relocate its private parochial school for eighty students from kindergarten to grade twelve with six teachers to the two-story portion of the subject structure located on the northwest portion of the site. The applicant's school is currently housed in the Faith United Church at 4900 10th Street, approximately four blocks southeast of the subject site. The applicant wishes to relocate its facility because the Faith United Church has projected using the space occupied by the school for a program for the homeless if approved by District of Columbia authorities and, more importantly, because the building does not currently meet the asbestos standards set forth for public and private schools in the District of Columbia.

8. The applicant originally attempted to establish a parochial school at the subject site in 1981. The applicant was of the opinion at that time that the proposed parochial school use was an accessory use to the existing church and, therefore, would be permitted as a matter of right. The applicant was subsequently informed by the Zoning Administrator that a Certificate of Occupancy was required for the school. The applicant accordingly moved its school to a nearby church and applied for special exception relief before the Board of Zoning Adjustment.

9. By its Order No. 13776, dated December 17, 1982, the Board denied special exception relief pursuant to Paragraphs 3101.41 and 3101.42 of the Zoning Regulations to use the subject premises as a day school for eighty students and six staff, including the use of approximately 8,000 square feet of lot area for outdoor play area and on-site parking. The Board concluded in that case that the applicant had not met the burden of proof under Paragraph 3101.41 which required that the proposed enrollment come primarily from children residing in the neighborhood in which the school is proposed to be located and that the said program was a use reasonably necessary to the neighborhood. The Board further concluded that eighty students and six teachers would be objectionable to adjoining and nearby property because of noise, number of students and close proximity to residential dwellings.

10. By its Order No. 14156, dated November 20, 1984, the Board denied special exception relief pursuant to Paragraph 3101.42 to use the subject premises as a day school for eighty students and six teachers, with five on-site parking spaces and no outdoor play area on site. The Board

concluded that the application was not significantly different from the previous application denied by the Board and reiterated its prior conclusion that the proposed facility would be objectionable to adjoining and nearby property owners because of the inherent traffic, noise and number of students in close proximity to residential dwellings.

10. Subsequent to the issuance of Order No. 14156, the applicant appealed the Board's decision to the D.C. Court of Appeals (515A.2d189, D.C. App. 1986). By decision dated September 10, 1986, the Court affirmed the Board's decision denying Application No. 14156.

11. An applicant whose application has been denied is prohibited from instituting a new appeal or application on the same facts within one year from the date of the order upon the previous application pursuant to 11 DCMR 3334.2. The previous application was denied by Order dated November 20, 1984.

12. The Court's opinion stated on page 194 that, for purposes of judicial review, the Board should consider the following as the proper basis for deciding whether a subsequent application for a previously denied special exception is the same claim or should be barred by "res judicata", not denied after a laborious analysis of the merits:

When a material change of circumstances affecting the merits of the application has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan. (Fisher v. City of Dover, 120 N.H. 187, 412 A.2d 1024, 1024 (1980).)

13. The Board is of the opinion that the merits of the subject application can properly be considered by the Board at this time. The application was filed on April 18, 1989, approximately four and one half years after the Board's decision denying Application No. 14156, dated November 20, 1984. In addition, the special exception criteria set forth by the Zoning Regulations regarding the establishment of the proposed facility was substantially amended by Zoning Commission Order No. 81-18, dated November 5, 1982; the parking requirements were substantially amended, effective March 1, 1985, pursuant to Zoning Commission Case No. 82-5; the subject property has been substantially developed since the applicant's original request; the number and location of

on-site parking spaces and the use of outdoor areas on the site are substantially different than the original request; and, the applicant has operated the school at a nearby location for approximately eight years with no evident adverse impacts on residential properties adjacent to that site.

14. A private school is permitted as a special exception in the R-2 District pursuant to 11 DCMR 207, if approved by the Board, subject to the following provisions:

a. The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

b. Ample parking space, but not less than that required in Chapter 21 of the Zoning Regulations shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

15. The applicant proposes a projected maximum enrollment of eighty students on site. The school program proposed would include the standard subjects such as mathematics, English, social sciences, and science as well as religious instruction. The teaching format is based on the "Accelerated Christian Education" program standards which are designed to integrate the moral and religious instruction of youth with standard educational subjects. The students of the facility participate in the D.C. School Bus Token program and report to the D.C. Public School system. The students participate in the nationwide California Achievement Tests at the end of each school year.

16. The primary classroom space would be provided on the first floor of the two-story portion of the structure which previously housed the main sanctuary of the church. The church's main sanctuary is now located in the large addition to the rear of the site, which is not associated with the proposed school activities. The classroom space would be set up with removable partitions or "office" areas for each student. Students would advance at their own pace and would not be categorized into grades but rather different learning levels. There are three rooms on the second floor and two rooms on the basement level which are proposed to be used for courses such as Spanish, Music, Arts, Chapel and Devotion, and lunch areas.

17. The hours of operation of the proposed facility are from 8:30 A.M. to 2:30 P.M., Monday through Friday. The school is proposed to be open from September through May. After school activities are limited to parents conferences which occur twice per school year between 2:30 and 5:30

P.M., Christmas and Spring programs, and two parent/teacher fellowship meetings.

18. The current enrollment of the school is seventy-seven. Of those seventy-seven students, forty-nine are residents of the District of Columbia, thirty are residents of Ward Five and twenty-eight are residents of Maryland. Six students currently enrolled at the school reside within 200 feet of the subject premises.

19. The proposed school's on-site activities will be confined to the interior of the building. The portion of the subject structure to be devoted to the school use is constructed of concrete blocks with a stucco facing. The windows to the building will be sealed as the building climate will be controlled with central heating and cooling.

20. The students will not congregate on the outside of the building before or after school hours. The students will be escorted off-site to a public playground one block from the subject site for organized recreation in small, supervised groups. Outdoor recess will be staggered over a two hour period.

21. Based on a survey of its current enrollment, during the past school year three students walked to school, twenty-three used public transportation, and the remainder arrived by automobile. Twelve automobiles were registered in the District of Columbia and eight automobiles were registered in Maryland. Many of the automobile trips consisted of carpools conveying more than one child to the site and families with more than one child enrolled at the school. Students are prohibited from driving to the site. There are four Metrobus stops located within a block and one half of the subject site.

22. The applicant does not provide transportation for students to and from the site. The applicant does provide a church bus for transportation for field trips which are arranged to occur on Fridays. All such field trips are supervised.

23. Parents dropping students off or picking them up will do so from the Sargent Road curb adjacent to the church's entrance. The drop-off and pick-up times will correspond with the school's hours of 8:30 A.M. and 2:30 P.M.

24. The school employs six teachers at present and does not propose a change in the number of teachers at the proposed facility. The Zoning Regulations require that the applicant provide two parking spaces for each three teachers.

25. The applicant currently provides ten parking spaces on the subject site. Five of the parking spaces are located in

front of the main sanctuary of the church and are accessed directly from Sargent Road. Five additional parking spaces are located to the rear of the property and are accessed via the sixteen foot public alley accessed from Delafield Place.

26. The applicant testified that they have had no complaints regarding the operation of its current school regarding noise, traffic, number of students or any other objectionable conditions. The operation of the proposed school will be generally the same as the existing school.

27. The existing church use associated with the subject premises occurs on Sundays with occasional weeknight and Saturday activities. The hours of operation of the proposed school will not create any added burden on the Sunday, Saturday or weeknight activities of the church.

28. The applicant argues that the proposed school will not result in any adverse impacts on adjoining and nearby property because of noise, traffic, number of students or other objectionable conditions. The portion of the existing structure which will house the proposed school is easily large enough to accommodate the number of students and staff proposed and school activities will take place indoors. The facility is further buffered from adjoining residences by the elevation of the subject site above adjoining properties and by a six foot stockade fence.

29. The Office of Planning (OP), by memorandum dated July 12, 1989, recommended that the application be conditionally approved. The Office of Planning was of the opinion that the applicant had met the requisite burden of proof under Section 207 of the Zoning Regulations. The conditions recommended by the Office of Planning are as follows:

- a. All parking areas abutting adjacent residential properties shall be screened from those properties by a solid brick or stone wall at least twelve inches thick and forty-two inches high or by evergreen hedges and/or evergreen growing trees which are thickly planted and maintained and are at least forty-two inches in height when planted.

- b. All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials or other material approved by the D.C. Department of Public Works as structurally equivalent, which form an all-weather impervious surface, and which is a minimum of four inches in thickness.

- c. The parking areas shall be designed so that no

vehicles or any part of a vehicle projects over any lot or building line.

d. Any lighting used to illuminate the parking area shall be arranged so that all direct rays of the lighting are confined to the surface of the parking area.

e. The parking areas shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent of the total area of the parking area or an area as determined by the Board of Zoning Adjustment.

f. All open areas of the subject property that are adjacent to surrounding residential properties shall be screened from those properties with evergreen hedges and/or evergreen growing trees which are thickly planted and maintained and are a minimum of forty-two inches in height when planted.

g. If any outdoor play activity is conducted, such activity shall have the appropriate supervision of children by designated staff persons at all times, whether on or off of the subject property.

h. All open areas of the subject property shall be kept clean and free of refuse and debris at all times.

The Board concurs with the recommendation of OP with modifications to the recommended conditions as further discussed in this order.

30. Advisory Neighborhood Commission (ANC) 5A did not submit written issues and concerns related to the application seven days prior to the public hearing as required by 11 DCMR 3307.1. However, the Single Member District Commissioner of ANC 5A04 submitted his written recommendation to the ANC and attached petitions of eighty-five signatures in opposition to the application and seven signatures in support of or offering no objection to the application.

31. Both the Single Member District Commissioner and the Chairman of the ANC appeared and testified at the public hearing in opposition to the application. Their issues and concerns are generally summarized as follows:

a. The proposed use would increase traffic on Sargent Road, a thoroughfare which carries commuter traffic from Maryland, and which is heavily travelled from 6:30 to 10:00 A.M.

b. There is parking on both sides of Sargent Road which could create a hazard for children who may enter the street from between cars at that location.

c. The building itself is located too close to the street.

d. The parking at the front of the site is located on an incline, requiring vehicles parked there to engage their emergency brake, and which could create a dangerous situation for children walking through the parking area if the brakes of a vehicle failed to work properly.

e. There either is no parking area at the rear of the site or it is not being used. There have been water runoff and erosion problems in that area of the site.

f. Ingress and egress to the rear parking area through the alley would interfere with resident's use of the public alley and could result in hazardous traffic conditions.

g. There are other sites in the area, including recently vacated school buildings, that are more suitable for the proposed use.

32. Eleven persons testified in support of the application at the public hearing. The grounds for the support were that the school has provided high quality academic and religious training for children at its present site and allowing the school to be relocated to the subject site would permit that service to continue; that the outreach ministries of the church and the proposed school would be an asset to the neighborhood; that the proposed school would not create an adverse impact on the neighborhood in that there is adequate paved parking on site to serve the needs of the school and the students are well disciplined and are supervised at all times whether they are inside or outside of the building. In addressing concerns expressed regarding the parking problems experienced by residents in the neighborhood, a witness in support testified that the church has attempted to take measures, including oral and written instructions, to prevent members from causing adverse parking impacts on neighborhood streets. In addition, the support noted that the majority of residences in the immediate have off-street parking on their property and the parking problems cited, whether caused by members of the church or not, generally relate to public on-street parking.

33. Eight persons testified at the public hearing in opposition to the granting of the application. In addition to the concerns raised by the Single Member District Commissioner and Chairman of Advisory Neighborhood

Commission 5A, the opposition was generally based on the following:

a. Based on the calculations of an opposition witness, the applicant should be required to provide thirty-four on-site parking spaces. The opposition argued that the applicant should be required to provide parking for a 299-seat auditorium on the site, in addition to providing two parking spaces for each three teachers.

b. The neighborhood is currently experiencing problems created by members of the church parking illegally on neighborhood streets, including double parking, blocking alleys and driveways and parking in "No Parking" areas on the street. The parking problems have been observed by neighbors during evening and weekend hours of church activities and include a two-week summer school activity for approximately fifty children.

c. The proposed drop-off and pick-up of students from curbside on Sargent Road is dangerous due to existing heavy traffic. The applicant should be required to provide an paved apron for vehicles to pull off of Sargent Road, drop off or pick up students, and re-enter traffic.

d. The quality of neighborhood life for adjacent residences will be adversely affected by the noise created by eighty children on the subject site, as well as littering and trespassing on their properties by students travelling to and from the play area on Delafield Place.

e. The hours of operation and the size of the congregation of the church have increased substantially over the years from approximately 100 in 1977 to more than 1,000 at present. There is no guarantee that, if the application were granted, that the number of students and staff at the proposed facility would not substantially increase as well.

f. There have been poor relations between the applicant and neighbors in the past in dealing with problems regarding parking and the location of noisy air conditioning equipment near adjoining residences.

g. Traffic through the public alley to the rear parking area would impact on air quality, privacy and fire safety access to other properties abutting the alley.

34. In addressing the issues and concerns raised by the members of the Advisory Neighborhood Commission who testified at the public hearing and the opposition, the Board finds as follows:

a. The Board notes that a church is permitted as a matter of right in an R-2 District. A certain degree of impact on a neighborhood would be associated with any church use. Witnesses in support of the application testified that the applicant has tried to minimize the impacts of the church use with regard to the parking practices of its members.

b. The Board notes that the parking requirements set forth in 11 DCMR 2101.1 were substantially revised by Zoning Commission by amendments effective March 1, 1985. Prior to the adoption of the current parking regulations, churches were not required to provide any on-site parking in order to locate in residential districts. The parking requirements for the existing church, including the "299 seat auditorium" cited by the opposition as a basis for requiring additional on-site parking, were calculated prior to the enactment of the current parking regulations. The Board further notes that that space is proposed to be devoted to classroom use by the proposed school and not for auditorium purposes.

c. The proposed school is permitted as a special exception in the R-2 District, subject to approval by the Board. When seeking relief through a special exception, the applicant has no burden to establish whether other sites might be appropriate for the proposed use regardless of how acceptable such a choice might be to the opposition.

d. The Board notes that its jurisdiction regarding the establishment of the proposed school at the subject location is limited to the zoning issues. The applicant is ultimately responsible for insuring that the facility is in compliance with all other applicable D.C. Code and licensing requirements.

e. The Board notes that the photographs contained in the record on the subject application evidence that there is an existing paved parking area at the rear of the site accessed from the sixteen foot wide public alley. The Board is of the opinion that the use of this parking area to provide ten on-site parking spaces for the proposed school would result in a greater impact on the residences facing Delafield Street than the limiting of on site parking to use of the five parking spaces accessed directly from Sargent Road,